

BEFORE THE DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

JOHN W. GILMORE, M.D.  
Certificate No. C-42422

Respondent.

)  
) No. D-4400  
)  
) N-37560  
)  
)

) NOTICE OF NON-ADOPTION  
) OF PROPOSED DECISION  
)

NOTICE TO ALL PARTIES:

YOU ARE HEREBY NOTIFIED that the Division of Medical Quality voted not to adopt the proposed decision recommended in this case. The Division itself will now decide the case upon the record, including the transcript.

To order a copy of the transcript, please contact the Transcript Clerk, Office of Administrative Hearings, 455 Golden Gate Ave., Room 2248,  
San Francisco, CA 94102

After the transcript has been prepared, the Division will send you notice of the deadline date to file your written argument. Your right to argue on any matter is not limited. The Division is particularly interested in arguments on the following: Whether there are any aggravating or mitigating circumstances.

In addition to written argument, oral argument may be scheduled if any party files with the Division within 20 days from the date of this notice, a written request for oral argument. If a timely request is filed, the Division will serve all parties with written notice of the time, date and place of hearing.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Division. The mailing address of the Division is as follows:

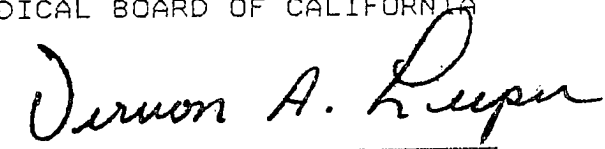
Division of Medical Quality  
Medical Board of California  
1426 Howe Avenue  
Sacramento, Ca 95825  
(916) 920-6393

Dated: July 26, 1991

DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA

Rev:tb:3/90

BY



VERNON A. LEEPER  
Chief - Enforcement

BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	
	)	
JOHN WESLEY GILMORE, M.C.,	)	Case No. D-4400
2201 Sacramento Street, No. 302	)	
San Francisco, California 94115	)	OAH No. N-37560
	)	
Physician and Surgeon Certifi-	)	
cate No. C42422,	)	
	)	
Respondent.	)	
_____	)	

PROPOSED DECISION

Hearing was before Stewart A. Judson, Administrative Law Judge, State of California, Office of Administrative Hearings on May 17, 1991 at San Francisco, California.

Jeanne C. Werner, Deputy Attorney General, represented the complainant.

John Wesley Gilmore, M.D. represented himself.

FINDINGS OF FACT

I

The accusation was made by Kenneth Wagstaff in his official capacity as the Executive Officer of the Medical Board of California, Division of Medical Quality, State of California (the Board).

II

The Board issued Physician and Surgeon Certificate No. C-42422 to John Wesley Gilmore, M.D. (respondent) on March 28, 1988. This license has been renewed through January 31, 1992. Respondent's current address of record is:

2201 Sacramento Street, #302  
San Francisco, CA 94115

### III

Respondent obtained his BS degree in premedical studies from Davidson College, North Carolina, in 1969. He graduated from West Virginia School of Medicine with an MD in 1973. He completed four years of post-graduate work at Presbyterian Medical Center in Denver, Colorado in June 1977.

### IV

From June to August 1977, he served as an emergency room doctor at Ft. Collins, Colorado. From September 1977 to December 1984 he was a physician on the islands of Kauai and Maui, Hawaii. From January 1985 through May 1986, he was employed as a Chief Medical Officer for American Hawaiian Cruises. He vacationed between May and October 1986 and then contracted with KRON, a medical corporation which locates assignments throughout the United States for client physicians. Respondent agreed to be available for KRON assignments as of January 1987.

### V

Sometime between October 1986 and January 1987, respondent accepted a position in the emergency room of a hospital in Parkersburg, West Virginia, where his father had retired. During this time, KRON advised respondent of job possibilities in Kentucky, North Carolina and Arizona. In November 1986, he met with KRON staff to facilitate licensing procedures and completed an application for filing with the Kentucky Medical Board. KRON handled all the paper work

The Kauai Veterans' Memorial Hospital refused to release any information without respondent's personal authorization which was forwarded. The hospital then sent a detailed history of respondent's past privilege suspensions to the Kentucky Board. Respondent learned that the anticipated Kentucky position had not materialized. He then believed he would not require a Kentucky license and thought KRON would withdraw his application.

### VI

Respondent accepted a position in Arizona. He completed that job and was next sent to Alaska to maintain a vacationing physician's solo practice. He returned to San Francisco when that position ended and sought opportunities in Northern California. He was offered, and accepted, a position in Charlotte, North Carolina.

### VII

Since March 1988, respondent has been employed by Marcus A. Conant, M.D. as an associate and is responsible for the primary care of more than 1,000 HIV-positive men and women. According to Dr. Conant, respondent performs his work competently and is well liked.

### VIII

During the seven years he was a staff physician at the Veterans' Hospital, a non-teaching institution, on Kauai, his privileges were suspended approximately six times for failing to complete patient notes. These transgressions included failing to initial every laboratory report, not dictating discharge summaries before patients were discharged, and failing to initial other reports. Respondent avers that, in many instances, these situations arose because other reports, including laboratory reports, were filed late. Respondent estimates that the suspensions ranged from less than twenty-four hours to ten days.

### IX

When respondent completed his application for Kentucky licensure, he was aware of this prior disciplinary history. Respondent stated in his application that his hospital privileges had never been disciplined. The Kentucky Board, upon receiving different information from the Veterans' Hospital in Kauai, sent KRON a letter seeking clarification. By this time, the Kentucky position was no longer viable. Respondent believed KRON would withdraw his application. Respondent avers he never received the letter requesting clarification.

### X

The Kentucky Board denied respondent's application for licensure on June 11, 1987. It found that respondent had falsified his application by stating that his hospital privileges had never been disciplined.

### XI

On April 20, 1988, the Hawaii Board of Medical Examiners adopted a "Settlement Agreement After Petition" wherein respondent agreed that he would not practice in Hawaii until he appears personally before the Hawaii Board and demonstrates to the reasonable satisfaction of the Board his ability and willingness to comply with the "Principles of Medical Ethics" as adopted by the American Medical Association or the Hawaii Medical Association. This action resulted from the Kentucky Board's finding that respondent had falsified his application.

### XII

Respondent applied to the California Board for licensure on December 16, 1987. In response to Question No. 17, which asks:

"Have you ever been denied a license, permission to practice medicine or any other healing arts, ..."

Respondent answered "Yes" to this question and explained his Kentucky situation as follows:

"Incomplete application (see attached)."

In his attachment, respondent stated:

"In April-May 1987, KRON Medical Corporation (Chapel Hill, N.C.) initiated a license application to the State of Kentucky for me in order to consider placing me in a one month locum tenens assignment in Kentucky. I did not receive a subsequent request sent from the Kentucky Board, to explain the situation as described on this application, Question 19. Therefore, because of an incomplete application, I was not granted a license in Kentucky."

(Question 19 in the California application asks if the applicant has ever had staff privileges in a hospital suspended or otherwise disciplined. Respondent answered this question in the affirmative and explained what had occurred.)

#### XIII

The evidence established that, at the time he completed his application for Kentucky licensure, respondent falsified his application by stating that he had never had his hospital privileges suspended when, in fact, this was untrue and known to be untrue by respondent at the time.

#### XIV

The evidence established that respondent's Hawaii license to practice medicine and surgery was suspended, by agreement, because of the Kentucky Board's action in denying his application due to his falsification.

#### XV

The evidence established that respondent falsified his California application for licensure by stating that his Kentucky application had been denied due to its incompleteness when, in fact, it was denied because of falsification.

### DETERMINATION OF ISSUES

#### I

Finding XIII: Unprofessional conduct was established. Cause for disciplinary action exists under Business and Professions Code section 2305 with Section 2234.

II

Finding XIV: Unprofessional conduct was established. Cause for disciplinary action exists under Business and Professions Code section 2305 with Section 2234.

III

Finding XV: Cause for disciplinary action exists under Business and Professions Code section 2235.

IV

Considered is the fact that respondent failed on two occasions to submit truthful information in response to questions in applications regarding his prior disciplinary record. To date, respondent continues to posture in the fiction that his Kentucky denial resulted from his inability to make an explanation due to failure to receive the Kentucky Board's request for further information. However, at the time he completed his Kentucky application, his answer regarding prior disciplinary history was false. He answered "No." He did not attach any supplemental information.

Respondent persisted in this conduct when completing his California licensure application. His explanation for the denial was that he submitted an application (Kentucky) with incomplete information. That was untrue for two reasons. First, his answer in the Kentucky application was an outright "No". Second, the Kentucky Board stated as its reason for denial "falsification" of the application, not incomplete information.

ORDER

Physician and Surgeon Certificate No. C42422 of John Wesley Gilmore, M.D. is revoked under Determinations I, II and III, separately and jointly.

Dated: June 4, 1991

  
STEWART A. JUDSON  
Administrative Law Judge

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